
Pete Wilson, Governor

CEQA and Historical Resources

CEQA Technical Advice Series



GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

1400 Tenth Street
Sacramento, CA 95814
(916) 445-0613

Paul F Miner, *Director*

Antero Rivasplata, *Chief, State Clearinghouse*

May 1996 revision

The **CEQA Technical Advice Series** is intended to offer CEQA practitioners, particularly at the local level, concise information about some aspect of the California Environmental Quality Act. This series of occasional papers is part of OPR's public education and training program for planners, developers, and others.

Acknowledgment

The author thanks Carol Roland of the State Office of Historic Preservation for substantial help in preparing this advisory paper. Her generous assistance contributed greatly to the quality of the following document.

Introduction



When a proposed project may adversely affect a historical resource, the California Environmental Quality Act (CEQA) requires the Lead Agency to carefully consider the possible impacts before proceeding (Public Resources Code Sections 21084 and 21084.1). Revisions to the Act made in 1992, particularly Chapter 1075 of the Statutes of 1992, have highlighted the importance of evaluating possible impacts upon historic resources. This advisory paper discusses how CEQA applies to city and county decisions on proposed projects which may potentially impact or otherwise involve historic resources.

CEQA exists to ensure that governmental decisionmakers consider the potential significant environmental effects of proposed projects before taking action. The Lead Agency is responsible for determining whether a significant adverse envi-

ronmental impact may occur and whether it can be mitigated to a level of insignificance. Where substantial evidence indicates that a significant adverse effect may occur, the lead decisionmaking agency is required to prepare an Environmental Impact Report (EIR) which discusses in detail the potential impact and feasible means of avoiding or reducing it. Where such an effect may be mitigated to a level of insignificance through changes in the project or other requirements, a mitigated Negative Declaration should be prepared rather than an EIR.

CEQA and Historical Resources is advisory only. Although it supplements the *CEQA Guidelines (Guidelines)* on this topic, it does not amend or replace the regulations represented by the *Guidelines*. All code references herein are to the Public Resources Code unless otherwise noted.

Background on Historical Resources Preservation



There are a number of ways in which local communities and the State encourage or require the preservation of California's historical resources. Before delving into how the CEQA requirements augment this preservation activity, a short overview of State and local preservation mechanisms is in order. Keep in mind that while the immediately following discussion reviews historic preservation programs, the focus of this advisory paper is on the CEQA-mandated process of evaluating development projects for potential significant effects on historical resources.

The State

The State Historic Resources Commission and the Office of Historic Preservation (SHPO) within the Department of Parks and Recreation administer California's historic preservation programs. The appointed Commission's pertinent duties include: evaluating applications and recommending properties for listing on the National Register of Historic Places; maintaining a statewide inventory of historical resources, including historical landmarks and points of interest; establishing criteria for recording and preserving historical resources; developing and adopting criteria for rehabilitating historic structures; developing and annually updating a statewide historic resources plan; overseeing administration of the California Register of Historic Places, including recommending standards for the evaluation of historic resources for inclusion in the register; and developing criteria and procedures for selecting enhancement and preservation projects for funding under the National Historic Preservation Fund, the California Heritage Fund, and other funding programs (Section 5020.4).

SHPO's duties include: serving as staff to the Commission; overseeing State agency compliance with State preservation statutes and programs;

administering Federal preservation programs in California; administering State programs such as the California Register; providing information and technical assistance to agencies and the public; and reviewing and commenting on the impact on historic resources of publicly funded projects and programs (Section 5020.6).

The California Register of Historical Resources is an authoritative guide to identifying the State's historical resources. It establishes a list of those properties which are to be protected from substantial adverse change (Section 5024.1).

A historical resource may be listed in the California Register if it meets any of the following criteria: (1) it is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage; (2) it is associated with the lives of persons important in California's past; (3) it embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic value; or (4) it has yielded or is likely to yield information important in prehistory or history. The Register includes properties which are listed or have been formally determined to be eligible for listing in the National Register, State Historical Landmarks, and eligible Points of Historical Interest.

Other resources require nomination for inclusion in the Register. These may include resources contributing to the significance of a local historic district, individual historical resources, historical resources identified in historic resources surveys conducted in accordance with SHPO procedures, historic resources or districts designated under a local ordinance consistent with Commission procedures, and local landmarks or historic properties designated under local ordinance.

An individual resource, district, or local landmark may be nominated for inclusion in the Reg-

ister by a resident, a landowner, or a local government. The Commission will review each request, after providing the opportunity for affected property owners, local agencies, and interested persons to comment on the proposed listing, before determining whether to include the resource on the Register (Section 5024.1). If the local government objects to the nomination, the Commission must make supportive findings for any listing. Nominations for which there is owner objection will not be placed in the Register, but may nonetheless be listed as eligible.

There are several State and federal programs which directly promote historic preservation. In order to encourage rehabilitation, rather than demolition or removal of historic values, the State Historical Building Code (Health and Safety Section 18950, et seq.) can be applied to qualifying structures. This allows repairs, renovations, and other construction in variance to the Uniform Building Code (UBC). The Mills Act (Revenue and Taxation Code Sections 439 et seq.) offers property tax relief in exchange for an agreement from the property owner to maintain the historic resource for a period of 10 years. The Marks Historical Rehabilitation Act authorizes cities, counties and redevelopment agencies to issue tax-exempt revenue bonds to finance the rehabilitation of significant historic buildings. In addition, Federal investment tax credits are also available for qualified rehabilitation of historic structures.

The State Office of Historic Preservation publishes a guide, *The Survey of Surveys* which lists all local resource surveys known to the SHPO. The State Office also provides a fact sheet about the California Register. Guidelines for the nomination of properties to the California Register are being developed by SHPO and may be available by the beginning of 1997. The SHPO can be contacted at:

1416 Ninth Street
Sacramento, CA 95814
(916) 653-6624

Other good sources of information on local surveys and designations are the city or county planning department and the local historical society. Specific information about a property identified in a formal survey can be obtained through the 11 regional Information Centers for California Historical Resources (formerly the Regional Archaeological Information Centers). A list of these centers is found in Appendix 2.

Local Government

Cities and counties use a number of tools to identify and protect historical resources. For instance, at least 60 cities and counties have adopted general plan elements containing detailed policies on historic preservation or historic structures. About 20 percent of California's cities and counties (1986) have completed historic resource surveys.

A variety of local actions directly protect historical resources by limiting the kinds of changes that can be made to them. Historic preservation ordinances for identified landmarks, historic districts, and other qualifying resources which require consideration of a use permit or other discretionary permit prior to changes in the resource are the most effective means of protection. Architectural design controls, for example, generally require that proposed alterations receive the review and approval of an architectural review commission or board. In order to encourage owners to preserve significant properties, some localities assist owners in obtaining low-interest rehabilitation loans, help finance improvements through redevelopment or other activities (particularly in historic business districts), and may engage in outright purchase to protect the integrity of historic resources.

CEQA Provisions



CEQA does not apply to ministerial actions which may impact a historical resource. For example, a project which complies with the Uniform Building Code and for which no discretionary permit is required does not fall under CEQA, even if the project may alter a building which is considered a “qualified historic structure” under the State Historical Building Code (*Prentiss v. City of South Pasadena* (1993) 15 Cal.App.4th 85). Common ministerial actions include roof replacement, interior remodeling, or other activities which require only a non-discretionary building permit. A ministerial action applies fixed standards or objective measurements and involves “little or no personal judgment by a public official as to the wisdom or manner of carrying out the project” (*Guidelines* Section 15369).

CEQA does apply to discretionary projects and equates a substantial adverse change in the significance of a historical resource with a significant effect on the environment (Section 21084.1). Further, the Act explicitly prohibits the use of a categorical exemption within the *CEQA Guidelines* for projects which may cause such a change (Section 21084). “Substantial adverse change” is defined as demolition, destruction, relocation, or alteration activities which would impair historical significance (Section 5020.1).

This effectively requires preparation of a mitigated Negative Declaration or an EIR whenever a project may adversely impact historic resources. Current CEQA law provides that an EIR must be prepared whenever it can be fairly argued, on the basis of substantial evidence in the administrative record, that a project may have a significant effect on a historical resource (*Guidelines* Section 15064). A mitigated Negative Declaration may be used where all potentially significant effects can be mitigated to a level of insignificance (Section 21080). For example, a mitigated Negative Declaration may be adopted for a project which meets

the Secretary of Interior's Standards for Rehabilitation and local historic preservation regulations, and so will not adversely affect the resource.

Key Questions

This presents the Lead Agency with two key questions which it must address in sequence. First, does a significant historical resource exist? Absent a historical resource, the agency may proceed as usual and, depending upon the circumstances, may be able to apply a CEQA exemption to the project. Second, where a significant historical resource does exist, will the proposed project result in a substantial adverse change such that the qualities that make the resource significant are impaired or lost? This question should be answered through preparation of an initial study for the project.

Is a Historical Resource Present?

Section 21084.1 is by turns both specific and vague in distinguishing the range of resources which may be considered historic. First, any resource listed in, or eligible for listing in, the California Register of Historical Resources is presumed to be historically or culturally significant. This includes listed archaeological resources (for example, California Landmark Number 838, The Indian Village of Tsurai). The Lead Agency's first step should be to consult the applicable Historical Resources File System Information Center to ascertain whether the resource is listed in the California Register.

A side note: CEQA establishes two separate mechanisms for evaluating potential adverse effects on archaeological resources. Section 21084.1 applies to those resources that are listed in or eligible to be listed in the California Register. Section 21083.2 applies to other “unique” archaeological resources as well. For more information

on the application of CEQA to archaeological resources see *CEQA and Archaeological Resources*, published by OPR.

Second, resources which are listed in a local historic register or deemed significant in a historical resource survey as provided under Section 5024.1(g) are to be presumed historically or culturally significant unless “the preponderance of evidence” demonstrates they are not. The next step is to consult the pertinent existing local register and survey. Because a local register or survey may not employ the same criteria as the California Register, listing or identification in a local survey does not necessarily establish if the property is eligible for listing on the Register. The Lead Agency will need to evaluate the resource in light of the Register’s listing criteria (these will be included in guidelines expected to be released by SHPO in June 1994). The Lead Agency may determine that the preponderance of evidence demonstrates that the property in question is not historically or culturally significant despite being listed on a local register or identified in a local historic survey. When making this determination, OPR strongly recommends that the agency cite for the record the specific, concrete evidence which supports that determination.

Third, a resource that is not listed in, or determined to be eligible for listing in, the California Register of Historic Resources, not included in a local register of historic resources, or not deemed significant in a historical resource survey may nonetheless be historically significant, pursuant to Section 21084.1. This provision is intended to give the Lead Agency discretion to determine that a resource of historic significance exists where none had been identified before and to apply the requirements of Section 21084.1 to properties that have not previously been formally recognized as historic. As the last step, the local agency should employ recognized criteria to determine whether a previously unrecognized significant historical resource exists.

As always under CEQA, the lead agency must determine whether there is “substantial evidence” in the administrative record to support a finding of significant effect. Substantial evidence is defined in Public Resources Code Section 21080(e) as including “...facts, reasonable assumptions

predicated upon facts, and expert opinion supported by facts.” Unsubstantiated claims of historical significance do not require preparation of an EIR (*Citizen’s Committee to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157 – no substantial evidence existed that a landscape garden planned in 1905 was ever installed or maintained).

Will There be a Substantial Adverse Change?

When a project would potentially affect a historical resource, the Lead Agency should prepare an initial study. The initial study, and the information upon which it is based, will provide a basis for determining whether the project may result in substantial adverse changes to the resource and, at the same time, a significant adverse environmental effect.

Section 5020.1 establishes the threshold of “substantial adverse change” as demolition, destruction, relocation, or alteration activities that would impair the significance of the historic resource. One example might be the removal of a historic structure from a historic district, thereby affecting the cohesiveness of the district. Remodeling a historic structure in such a way that its distinctive nature is altered would be another. The Secretary of Interior’s *Standards for Rehabilitation* provide a standard guide to recommended (and not recommended) treatments to historic properties. The *Standards* may be obtained from SHPO.

Section 21084.1 is intended to provide, in the form of CEQA mitigation measures or project alternatives, new protections for historical resources which may be adversely changed by a project. Presumably, the Lead Agency may conclude that a project will have no significant environmental effect when there is no substantial evidence of an adverse change. Buildings and other historic resources protected from adverse changes by local regulations such as a historic district designation or historic preservation ordinance, may logically be expected not to suffer such changes as long as the project complies with those regulations. Where such protective regulations exist, or where mitigating conditions of approval are imposed, the initial study for the development project may cite

them as evidence that no impact will occur, or that any impacts will be mitigated to a level of insignificance. Either a Negative Declaration or mitigated Negative Declaration could be adopted under those circumstances.

In *Citizen's for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 925, a California appellate court upheld a city's mitigated negative declaration on essentially the same grounds as discussed above. The project consisted of a 40-unit low-income housing project which would rehabilitate and restore two craftsman-style buildings on the front of the property and demolish another four buildings in the rear. West Hollywood had established a "Craftsman District" which encompassed the front buildings for purposes of historic preservation and established a Cultural Heritage Advisory Board (CHAB) to evaluate proposed activities within the district. When creating the District, the city had considered including the rear buildings within its boundaries, but concluded that they were not historically significant. The housing project was reviewed and approved by the CHAB as being benign relative to the architectural features and historic value of the front buildings and in conformance with the Secretary of Interior's rehabilitation standards.

The court found that there was no substantial evidence to support Citizen's claim that a historical resource was being adversely impacted by the project. Those structures deemed to be of historical importance were being rehabilitated and restored in accordance with adopted city, state, and federal regulations. The structures proposed for demolition were neither on a historic register, nor eligible for listing in the California Register, and their potential historical significance had been dismissed after study by the city during creation of the Craftsman District. Under the circumstances, the city was justified in adopting a mitigated Negative Declaration.

Where there is no protective ordinance or other regulation in place or where protective actions such as mitigation measures are insufficient to avoid a "substantial adverse change" in the resource, the Lead Agency should conclude that an adverse change will occur. In that case, an EIR must be prepared. As mentioned before, for purposes of CEQA a substantial adverse change in the historical resource is the equivalent of a significant adverse environmental effect.

Historical Resources and Natural Disasters

Most projects undertaken to demolish or replace property or facilities damaged as a result of a disaster for which a state of emergency has been declared are statutorily exempt from CEQA (subdivision (b), Section 21080). Notwithstanding that exemption, actions in the aftermath of a disaster which might adversely affect historical resources are subject to State laws governing consideration of historical resources.

Section 5028 provides that no structure listed in the National Register of Historic Places, the California Register, or a local register that has been damaged as a result of a natural disaster is to be demolished, destroyed, or significantly altered (except for alterations to preserve or enhance historic value) unless: (1) the structure represents "an imminent threat to the public of bodily harm or of damage to adjacent property," or (2) the action is approved by the SHPO. That section further establishes the procedure for review of proposed actions by the SHPO.

In the wake of an earthquake, flood, fire, or other natural disaster the local agency may only demolish or destroy those structures which are an "imminent threat." In all other cases, the local agency must notify and consult with SHPO immediately if there are damaged historical resources which may require demolition, destruction, or significant alterations.

Appendix 1

Excerpts from Public Resources Code



Excerpts from Public Resources Code Section 5020.1:

- (h) “Historic district” means a definable unified geographic entity that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.
- (i) “Historical landmark” means any historical resource which is registered as a state historical landmark pursuant to Section 5021.
- (j) “Historical resource” includes, but is not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic agricultural, educational, social, political, military, or cultural annals of California.
- (k) “Local register of historic resources” means a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution.
- (q) “Substantial adverse change” means demolition, destruction, relocation, or alteration such that the significance of an historical resource would be impaired.

Subdivision (g) of Public Resources Code Section 5024.1:

- (g) A resource identified as significant in an historical resource survey may be listed in the California Register if the survey meets all of the following criteria:
 - (1) The survey has been or will be included in the State Historic Resources Inventory.
 - (2) The survey and the survey documentation were prepared in accordance with office procedures and requirements.

- (3) The resource is evaluated and determined by the office [of Historic Preservation] to have a significance rating of Category 1 to 5 on DPR Form 523.
- (4) If the survey is five or more years old at the time of its nomination for inclusion in the California Registry, the survey is updated to identify historical resources which have become eligible or ineligible due to changed circumstances or further documentation and those which have been demolished or altered in a manner that substantially diminishes the significance of the resource.

Public Resources Code Section 21098.1:

A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subsection (k) of Section 5020.1, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.

Appendix 2

Historical Resources Information Centers



The following institutions are under agreement with the Office of Historic Preservation to:

1. Integrate newly discovered Resources and information on known Resources into the California Historical Resources File System;
2. Supply information on known Resources and surveys to government, institutions, and individuals who have a justifiable need to know; and
3. Supply a list of consultants who are qualified to do archeological field work within their area.

Office of Historic Preservation Department of Parks and Recreation

P.O. Box 942896

Sacramento, CA 94296-0001

(916) 653-6624 Fax (916) 653-9824

Coordinators: Mr. William C. Seidel, Staff
Archaeologist, (916) 653-9125

Ms. Jan Wooley, Staff Historian, (916) 653-9019

Information Centers

Dr. David A. Fredrickson, Coordinator

Northwest Information Center

Department of Anthropology

Sonoma State University

Rohnert Park, CA 94928

Attn: Leigh Jordan

(707) 664-2494 Fax (707) 664-3947

*Serving Alameda, Colusa, Contra Costa, Del Norte,
Humboldt, Lake, Marin, Mendocino, Monterey,
Napa, San Benito, San Francisco, San Mateo, Santa
Clara, Santa Cruz, Solano, Sonoma, and Yolo
Counties.*

Dr. Mark Kowla, Coordinator

Northeast Information Center

Department of Anthropology, Colusa 103

California State University, Chico

Chico, CA 95929-0400

Attn: Bill Dreyer

(916) 898-6824 Fax (916) 898-6824

*Serving Butte, Glenn, Lassen, Modoc, Plumas,
Shasta, Sierra, Siskiyou, Sutter, Tehama, and Trinity
Counties.*

Dr. Jerald J. Johnson, Coordinator

North Central Information Center

Department of Anthropology

California State University, Sacramento

6000 J Street

Sacramento, CA 95819-5162

Attn: Marianne Russo

(916) 278-6217 Fax (916) 278-5162

*Serving Amador, El Dorado, Nevada, Placer,
Sacramento, and Yuba Counties.*

Ms. Elizabeth Greathouse, Coordinator

Central California Information Center

Department of Anthropology

California State University, Stanislaus

801 W. Monte Vista Avenue

Turlock, CA 95382

Attn: Alice Lawrence

(209) 667-3307 Fax (209) 667-3333

*Serving Alpine, Calaveras, Mariposa, Merced, San
Joaquin, Stanislaus, and Tuolumne Counties.*

Ms. Catherine Lewis Pruett, Coordinator

Southern San Joaquin Valley Information Center

California State University, Bakersfield

9001 Stockdale Highway

Bakersfield, CA 93311-1099

(805) 664-2289 Fax (805) 664-3194

*Serving Fresno, Kern, Kings, Madera, and Tulare
Counties.*

Dr. Michael A. Glassow, Coordinator
Central Coastal Information Center
Department of Anthropology
University of California, Santa Barbara
Santa Barbara, CA 93106
(805) 893-2427

Serving San Luis Obispo and Santa Barbara Counties.

Dr. Lynn Christenson, Coordinator
South Coastal Information Center
Social Sciences Research Laboratory
San Diego State University
San Diego, CA 92182-0436
Attn: Jan Culbert
(619) 594-5682 Fax (619) 594-1358

Serving San Diego County.

San Bernardino Archaeological Information Center

San Bernardino County Museum
2024 Orange Tree Lane
Redlands, CA 92374
(909) 792-1497 Fax (909) 798-8585

Serving San Bernardino County.

Eastern Information Center

Department of Anthropology
University of California, Riverside
Riverside, CA 92521
(909) 787-5745 Fax (909) 787-5409

Serving Inyo, Mono, and Riverside Counties.

Mr. Jay Von Werlhof, Coordinator
Southeast Information Center
Imperial Valley College Museum
P.O. Box 3490
El Centro, CA 92244

Attn: Ray Wilcox
(619) 352-8320 Ext. 471

Serving Imperial County.

Dr. Lynn Gamble, Coordinator
South Central Coastal Information Center

Institute of Archaeology
University of California, Los Angeles
Los Angeles, CA 90024-1510
(310) 825-1980 Fax (310) 206-4723

Serving Los Angeles, Orange, and Ventura Counties.